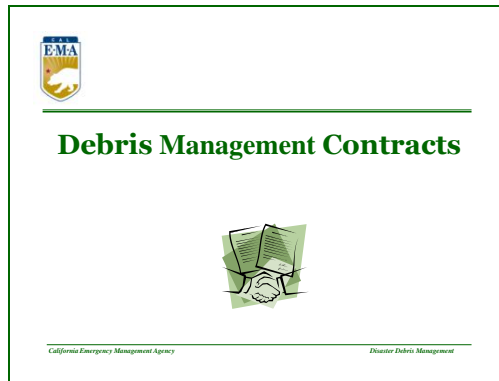


Debris Contracting

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Introduction



Communities that fail to comply with proper contracting procedures or enter into inappropriate contracts may experience severe financial consequences.

- Communities may end up paying a contractor for work that was not originally part of the contract
- The period of performance may become excessive such that the work is not completed in a timely manner to meet the needs of the community.
- Lawsuits may result by the community (residents), the contractor, or both.
- If there is a state or federal disaster declaration:
 - o The community may not be reimbursed for all costs incurred, even if payment must be made to the contractor.
 - o There may be delays in funding pending the results of audits, collection of documentation, justification of costs, etc.

Debris Contracting Issues and Responsibilities



If the magnitude of the emergency debris operation is beyond the capabilities of local force account resources, State resources, mutual aid agreements, and volunteer labor and equipment, contracting for labor and equipment may be necessary. Contracted activities may include:

- Debris management planning (*Not eligible if done prior to the disaster*)
- Clearance, removal and hauling
 - o Separate contracts may be prepared for clearance activities and removal and hauling

- Demolition
 - Demolition activities are generally beyond the capability of most communities forces
- Debris Management Sites
 - Overall operations or specific activities
- Recycling or Volume Reduction Activities
- Removal and Disposal of Household Hazardous Waste, Asbestos and other hazardous materials
- Final Disposal
- Monitoring
- Overall Project Management


Note: Project Management costs are sometimes eligible for state and/or federal assistance, but this depends upon the magnitude of the event, the impact to the community, reasonableness of the costs, etc.

Contracting – To be or not to be?



Debris Contract

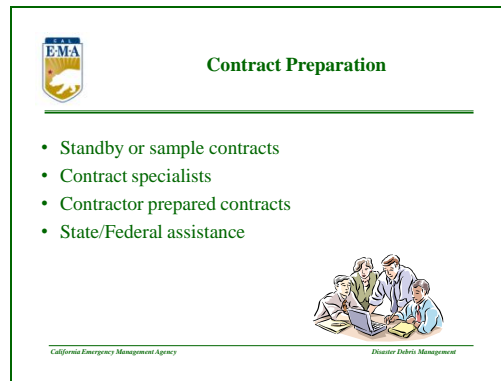
- Amount and types of debris
- Private property removal
- Debris concentration area
- Debris management site locations
- Landfill disposal site locations
- Task requirements
- In-house capabilities

California Emergency Management AgencyDisaster Debris Management

With a wide range of possible contracted activities, communities need to anticipate their contracting needs during debris management planning. The community should:

- Assess the potential amount and mix of debris from an anticipated event
- Determine a plan for collecting, hauling and disposing the materials
- Assess the capability of their own forces to perform the work
- Issues to consider in determining if work should be contracted include:
 - Potential quantity and composition of debris – how much and what type
 - Is removal from private property anticipated?
 - How widespread is the forecasted debris, and where will it be located?
 - Where is the location of the debris management sites or landfill disposal sites?
 - Will recycling be done?
 - What are the requirements for accomplishing these activities?
 - What are the in-house capabilities?

Contract Preparation



Prior to a disaster, it is recommended that communities prepare:

- Standby contracts that are pre-awarded executed and ready for implementation
- Sample contracts that are pre-drafted and ready to be finalized, advertised and awarded

Many local governments use a contracting specialist to prepare their contracts. The specialist should:

- Closely coordinate with debris staff to ensure that all technical aspects are correct and the scope of work is appropriate
- Ensure the appropriate type of contract is used for the work to be performed – time and materials, unit price, lump sum (discussed later in this unit)
- Ensure compliance with proper bidding and award procedures
- Be responsible for all contract administration and documentation
 - A complete file of the process should be maintained, including development of the scope of work, a copy of the bid advertisement, summary of bids received, selection process and basis, invoices, memos of meetings, etc.

Often contractors will offer use of a contract prepared by their company. Although this offer may seem attractive in the essence of time, the contract should be reviewed by legal counsel to ensure:

- It is technically and legally correct
- It has proper safeguards for the awarding entity
- The work covered by the contract is eligible for reimbursement
- The payment is not being made for technical advice available free from the State or FEMA. This includes instructions on completing project worksheets, eligibility, contracting, environmental requirements, etc.


While communities may enter into any contracts they wish, Cal EMA and FEMA are not a party to those contracts. These communities are strongly encouraged to work with state and federal personnel to ensure that the costs set forth in the contracts they are considering are eligible for reimbursement.

- To facilitate assistance to communities in this matter, Cal EMA/FEMA staff will be available to provide technical assistance before contract execution to help ensure compliance with the provisions of the PA Program, as well as other applicable statutes and regulations
- If a contract is in-place prior to meeting with Cal EMA/FEMA, the terms of the contract should still be discussed to ensure compliance issues

Regardless of who prepares the contract or provides technical assistance in its preparation, the community is ultimately responsible for the terms of the contract, including:

- The scope of work is accurate and appropriate
 - All documentation is complete and appropriate
 - The work performed is eligible and the costs are reasonable
 - The work is adequately monitored
-

Procurement Requirements



Procurement Requirements Regulations

State - CDAA, Section 2915

- Local agency subject to applicable state laws
- State, or state employee has no responsibility with work done by a local agency

Federal - 44 CFR, Part 13

- Must meet federal procurement standards
- Sole source contract used only in rare instance

California Emergency Management Agency Disaster Debris Management

In large debris generating events, communities often become overwhelmed with the activities to be performed and do not comply with proper procurement requirements. Local governments must comply with all State, federal and local procurement requirements.

State

CDAA, Section 2915

(a) General Provisions

(1) Applicants receiving federal disaster assistance funds must comply with applicable federal contracting and procurement requirements contained in Title 44, Code of Federal Regulations (CFR), part 13, Sections 13.35 and 13.36, and Office of Management and Budget Circulars (OMB) A-102 (Revised 10/7/94, As Further Amended 8/29/97) and A-110 (Revised 11/19/93, As Further Amended 9/30/99). Funds withdrawn by the federal government, due to non-compliance with the applicable federal contracting and procurement requirements shall result in a loss or reduction of state cost-sharing assistance. The state shall not provide additional funding to an applicant to substitute for federal funding withdrawn as a result of noncompliance with federal regulations.

2) Any work performed by a state agency, at the request of a local agency, shall be agreed upon in writing and subject to the state Public Contracts Code. Work performed by a local agency shall be subject to the

laws governing the performance of such work by the local agency and any other applicable state or federal laws. Neither the state nor any officer or employee thereof shall have any responsibility in connection with any work performed by a local agency.

(3) Any contract executed between the local agency and the agency secretary, pursuant to the Act, shall contain a provision under which the local agency agrees to hold the state harmless from damages resulting from the work for which funds are allocated; and

(4) A payment bond is required on all contracts involving expenditures in excess of twenty-five thousand dollars (\$25,000), pursuant to sections 3247 and 3248 of the Civil Code, on any public work for a political subdivision including, but not limited to, improvements and replacements of any building, road, bridge or other structure.

Federal Regulations

- Federal procurement standards must be met, or exceeded, if FEMA assistance is to be requested on Presidentially declared disasters
 - o Title 44 of the Code of Federal Regulations, Part 13 covers grant administration, including procurement and contracting criteria
 - o Normal State and local procurement requirements must still be followed, but such regulations must be at least stringent as the Federal procurement regulations (Part 13)
- To be eligible for FEMA assistance, competitive bidding must be used except for initial emergency situations
 - o Non-competitive (sole source) contracting is acceptable ONLY in rare circumstances where there can be no delay in meeting a requirement, such as for emergency road clearance
 - o Not all “emergency” work requires “emergency” contracting procedures. Competitive bidding normally can be resumed within days of the disaster.
- If the Governor waives contracting procedures because of the emergency that does not necessarily mean competition is suspended. It generally means that time can be compressed. Emergency contracting still may require, or can use, competitive bidding
 - o In the past, many communities have successfully developed a scope of work, identified contractors that can do the work, and made telephone invitations to bids to expedite the process

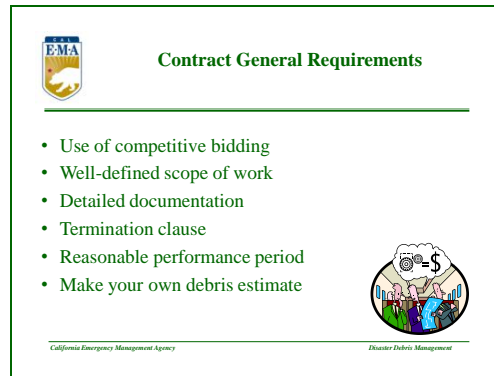
Contractor Selection

For declared disasters, a community PA applicant is not required to select the low bid in the competitive bid process. The community may use their normal bid evaluation criteria in selecting a contractor.

- Under state and federal regulations consideration may be given to the following factors when selecting a contractor:
 - o Contractor integrity
 - o Compliance with public policy
 - o Record of past performance
 - o Financial and technical resources
- In addition, other criteria that may be considered includes:
 - o Cost – ensure costs are reasonable. Costs that appear too low may not actually be attainable by the contractor and problems may arise when the contractor is faced with modifying work procedures to cover costs and maintain profits
 - o Other current obligations/work commitments – is sufficient staff available to complete work in a timely manner?
 - o Proposed work plan

- o References
 - o Use of local resources
-

Contracts – General Requirements



The following are general requirements to be carefully considered and included in debris-related bid documents and final contracts:

- Use competitive bidding
 - o Identify criteria for the work, including
 - ♦ Criteria for responding – time, scope of response
 - ♦ How long between award and time to mobilize
- The scope of work must be well defined and each intended task specifically addressed
 - o Be comprehensive, but concise
 - o Without specific language for each task, the contractor may perform work that was not originally intended, or fail to perform work that must be redefined often at additional cost
 - o For Presidentially declared disasters, eligible work must be clearly defined
- Documentation is a critical component in supporting contractor invoices and in supporting reimbursement
 - o Records should be auditable
 - o Lack of proper documentation can jeopardize or delay funding
- Include a termination for convenience clause – this will provide the community the option to cancel the contract for any reason
- Define a reasonable period of performance
 - o Determine when the work needs to be complete – otherwise, the work may not be performed in a timely manner to meet the needs of the community
 - o Include penalties if the work is not completed within the specified period of performance
- Base the contract on an estimate of debris as prepared by the community staff. Do not rely on contractor estimates

Contract Considerations



Contract Considerations

- Fully document process
- Ensure costs are reasonable
- Monitor operations
- Ensure all contracted activities are required
- Request technical assistance from CalEMA and/or FEMA




California Emergency Management Agency Disaster Debris Management

When state and/or federal funding is involved, or expected:

- Ensure the process is fully documented, including bid advertisement, responses, contract award, etc.
- Ensure the costs are reasonable, and include a justification of costs
 - o Only reasonable costs will be reimbursed
- Ensure the activities are well-monitored and the process of monitoring is documented
- Ensure that all activities included in the contract are required for debris removal, and are eligible for reimbursement


If there are any questions regarding any aspects of the contracting, the community may request technical assistance from the State or FEMA.

Contract Cost Estimating



Contract Cost Estimating

- Means cost data reports
- Local engineering & construction companies
- Historical information
- Local public works department
- State Transportation (Caltrans)
- State Department of Forestry (CDF)




California Emergency Management Agency Disaster Debris Management

To estimate a reasonable cost for a contract, the community may consult the following sources for cost data:

- Publications such as Means Cost Data Reports
 - o Depending upon what is being contracted, these documents may include costs on specific equipment
- Local engineering and construction firms


- o These firms can be employed to develop the cost estimate, or may be willing to provide some basic data
 - Historical data
 - o These data do not necessarily have to be for the same work, as long as the work is similar. It will provide a guide and some justification of costs.
 - Local Department of Public Works
 - o This department usually is involved in contracting for various types of work using the same types of equipment needed in debris-related activities
 - State Department of Transportation (DOTs)
 - o Most DOTs maintain a comprehensive bid tabulation breakdown showing the average price paid for various contracted work
 - State Department of Forestry & Fire Protection
 - o May be able to provide input to the cost estimate
-

Contract Cost Estimating – Cont'd




Contract Cost Estimating – Cont'd

- Type of debris
- Removal method
- Permit requirements
- Work site limitations




California Emergency Management Agency Disaster Debris Management



Contract Cost Estimating – Cont'd

- Site access
- Truck size
- Disposal site distance & route
- Traffic conditions
- Roadway conditions



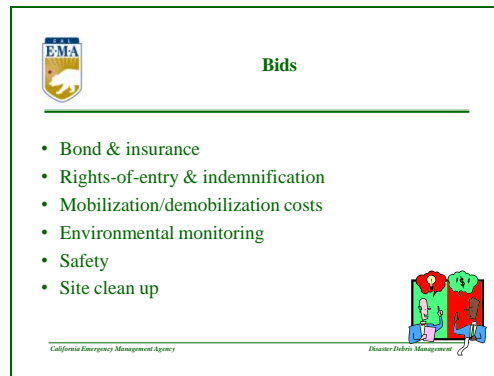
California Emergency Management Agency Disaster Debris Management

When evaluating a reasonable cost for debris-related activities, various factors must be considered:

- Type, mix and amount of debris.
 - o The type and mix of debris will have a significant impact – how much is vegetative, how much is C&D? Is there any asbestos? What about household hazardous waste? Is any demolition required? What special handling and disposal requirements must be considered due to the type and mix?
 - o The amount of debris will affect the cost. Often, but not always, the larger the magnitude of debris, the less the unit cost
 - Method of removal
 - o How will the debris be removed? Front-end loaders and trucks? Is special equipment required?
 - Permitting requirements
 - o Including permits for handling household hazardous waste, to operate Debris Management Sites, for demolition
 - Any limitations at the work site
 - o Work hours may be limited, there may be competitive work going on
 - o In some areas, there is a limitation on truck size. In older cities, with narrow streets, small trucks and other equipment will be required. There will be competition for equipment and highway space, so there may be a lack of available trucks. This is a particular problem in the US Territories
 - Access to the debris, the debris management sites, and the final disposal site
-

- o The type and width of the road may limit the size of equipment that can be used.
 - o Access to the debris management site may be limited by lack of access roads
 - Depending upon the type and amount of debris, the haul distance may be lengthy (or take extensive time)
 - o The closest site was almost 100 miles away. In CA, hauls of over 100 miles have been necessary. Debris from 2007 Fire at Lake Tahoe was taken to locations in Nevada. Debris in Crescent City is taken to Oregon.
 - o Routes may be narrow and winding, increasing haul times
 - It may be necessary to haul the debris through areas of heavy traffic, increasing haul time
 - Roadway conditions may be bad because of the incident, rescue and emergency equipment, and heavy equipment usage
-

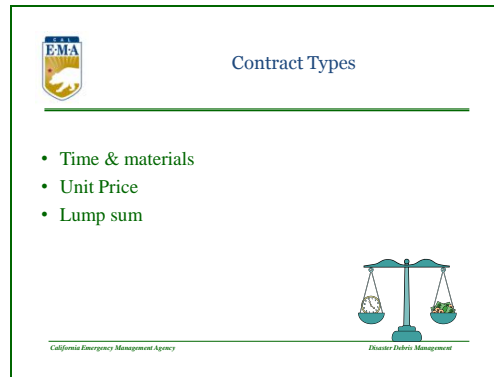
Bids



When preparing bid solicitations, include the following costs or sections:

- Bond and insurance requirements
 - o This is a protection for the community; however, there are costs associated with them
- The requirement for rights-of-entry and hold-harmless agreements to enter private property
- Costs of mobilization and demobilization
 - o In large disasters, these efforts can be quite costly, but are a cost to the contractor
 - o The work includes organizing the equipment, moving it to the site, then doing the reverse
- Environmental monitoring may be required
- Safety requirements must be reviewed, and could increase costs
- Debris management site clearance and cleanup
 - o If a good environmental baseline study is conducted, and a monitoring program is implemented, this should be relatively easy
 - o Section related to state and federal eligibility requirements, and the necessity for the contractor to comply with those requirements

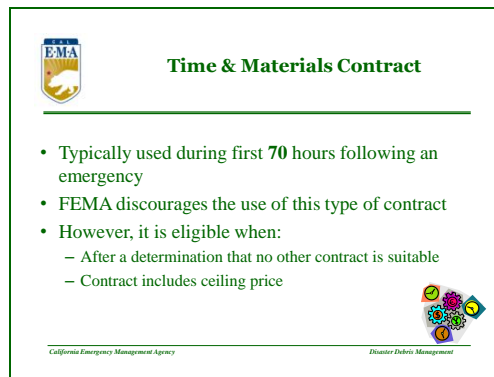
Contract Types



It is important for a community to understand the types of contracts that may be appropriate for various types of work.

- There are three basic types of contracts:
 - o Time and Materials
 - o Unit Price
 - o Lump Sum

Time and Materials Contract



A Time and Materials contract is based on hourly rates for personnel and equipment.

- The contractor is paid an hourly rate for the actual time performing the specified work.
- Bids should include all overhead costs.
- Standby time.
 - o For rental equipment, if determined cost effective by the agency secretary.
 - o Standby time for applicant owned equipment is not allowed
 - o Standby time is not an eligible cost for FEMA reimbursement.

Federal Emergency

- Under federal regulations (44CFR, Part 13.36), time and material contracts can be used when:
 - After a determination that no other contract is suitable, and
 - If the contract includes a ceiling price that the contractor exceeds at its own risk
- Time and Materials contracts may be the most appropriate method of contracting during first 70 hours following an emergency.
 - Generally, in the first 70 hours after a disaster, clearing debris from the roadways for access rather than removing debris to disposal areas is the most important activity a community is involved in with regard to disaster debris activities.
 - Applicants often use a Time and Material contract to perform this work
- All Time and Materials contracts should clearly state:
 - The price for the equipment applies only when the equipment is operating.
 - The hourly rate includes the operator, fuel, maintenance and repair.
 - The community reserves the right to terminate the contract at its convenience.
 - The community does not guarantee a minimum number of hours.
 - The contract has either a dollar ceiling or a not-to-exceed-number-of-hours clause.
 - The hours of operation of the contractor (to ensure monitoring is on-going when the contractor is working and to minimize disruption to the community).

Regarding Presidentially declared disasters:

- To be eligible for federal reimbursement, FEMA would like time and material contracts to be limited to a maximum of 70 hours of actual emergency debris clearance work and should be used only after all available local, tribal and State government equipment has been committed
 - The 70 hours provides time for:
 - ◆ Moving the debris from the roadway to the curbsides or rights-of-way to allow passage of emergency vehicles, and
 - ◆ Negotiating unit price and/or lump sum contracts.
 - If a PA applicant awards multiple time and material contracts, those contracts should run concurrently, not consecutively
 - ◆ The 70 hours begins when the first contract is awarded
- Cal EMA has prepared a Flyer entitled “Debris Contracts” and has been included as a reference document. This document is also available on the Cal EMA website.

Time and Materials Contract – Cont'd



Time & Materials Contract

Advantages	Disadvantages
<ul style="list-style-type: none">• Extremely flexible• Not dependent on scope• Ready for immediate response• Contractor assumes the risk	<ul style="list-style-type: none">• Requires close contractor oversight & direction• Requires documentation of actual equipment & operator hours• Requires full-time, on site monitors



California Emergency Management AgencyDisaster Debris Management

Advantages:

- Extremely flexible, not scope-dependent
- Has a wide range of uses – clear major access routes or access to critical facilities
- Available for immediate response activities - Is suitable for emergency "hot spots" and early debris rights-of-way clearance

Disadvantages:

- Requires close contractor oversight and direction as to what work to perform
- Requires documentation of actual hours worked by equipment and operators
- Requires competitive bids or negotiated reasonable hourly rates for equipment and operators
- Specifies equipment as generically as possible to encourage competition
- Requires full-time (on-site at all times with the contractor) and trained contract monitors to document actual equipment usage

Unit Price Contract



Unit Price Contract

- Requires full-time trained third party contract monitors
- Requires all trucks to be accurately measured & numbered
- Requires all truckloads to be documented



California Emergency Management AgencyDisaster Debris Management

A unit price contract uses construction units (Cubic Yards, Tons, Each) and prices to develop line item costs and total contract costs.

- The unit price contract should be used when the scope of work is difficult to define. The contract will be based on estimated quantities.
 - There must, however, be specific documentation compiled during performance of the work to support the actual quantity of work completed
 - Therefore, to be properly administered, unit price contracts should have full-time, trained monitors to ensure compliance with contract requirements
-

Unit Price Contract – Cont'd

 Unit Price Contract Advantages	
<u>Advantages</u>	<u>Disadvantages</u>
<ul style="list-style-type: none">• Is flexible• Accurate account of actual quantities removed• Wide range of competition 	<ul style="list-style-type: none">• Segregation of debris complications• All trucks must be numbered, measured & documented• Possible contract fraud 

California Emergency Management Agency Disaster Debris Management

Advantages:

- Is flexible – don't need to get an exact determination of the amount of debris (but a good estimate will provide assurance that total quantities are reasonable – estimate should be determined by the PA applicant, not the contractor)
- Requires accurate account of actual quantities removed in either cubic yards or tons
- Ensures a wide range of competition because of simplicity of contract
- Has a low risk for the contractor (and great advantages if quantities can be maximized)

Disadvantages:

- Proper administration requires dedicated contract monitors at the pickup site and at the disposal site
 - o Collected debris must meet terms of contract and FEMA eligibility criteria
 - o Trucks must be sufficiently loaded
- Has possibility of contractor fraud if loading and dumping operations are not closely monitored
- Is complicated if segregation of debris is required
- Requires all trucks to be accurately measured (for cy payment) or weighed (for ton payment), and numbered – and periodically verified
- Requires all truckloads to be documented. For most accurate accounting, a pre-numbered load ticket should be used. Load tickets are the verification of the estimated quantity of debris in cubic yards or tons deposited at the dumping site.

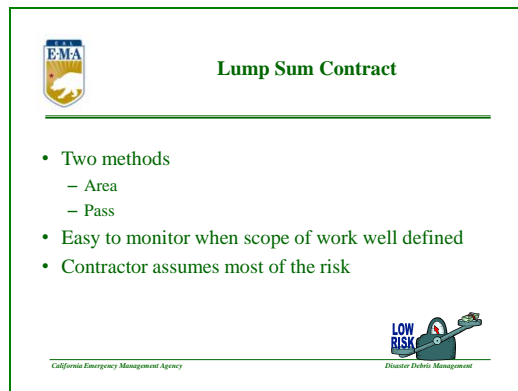
Unit Price Contract Verification



On FEMA projects, unit price contracts will require the PA applicant to have a verification process in place to help them in the documentation for their claim.

- When using volume (cubic yards) measurements, an inspection station at the entrance and exit of the disposal site is critical in verifying the contractor's loads and to ensure that the load has been fully dumped
- When using weight (ton) measurements, certified scales must be used
 - o Scales must be certified by person licensed by the State
- A systematic method of recording load and measurement data must be in place. Load tickets are normally used as the basis for verifying quantities.

Lump Sum




A lump sum contract establishes a fixed contract price by a one-item bid from the contractor.

- The lump sum contract should be used only when the scope of work is clearly defined by the community (not the contractor), including quantity, type and location of debris.
 - o This information will be used to judge the reasonableness of the cost for reimbursement.
 - o Change orders must clearly state the reason for the change; why the debris was not considered in the original contract, the exact quantity, mix and location, etc.


- It is understood in a lump sum contract that the price for the work is fixed unless the scope of work changes; therefore, the bottom line of the contract is not in question, as it is with the unit price contract.
 - There are two methods of measurement:
 - o Area method
 - o Pass method
-

Area Method



Lump Sum - Area Contract

<u>Advantages</u>	<u>Disadvantages</u>
<ul style="list-style-type: none">• Minimum management needed• Contractor assumes most of the risk• Price is based on estimated quantity	<ul style="list-style-type: none">• Needs very clear, definite scope of work• Can be difficult to estimate amount of debris• High probability of claims

California Emergency Management AgencyDisaster Debris Management

The area method of a lump sum contract is used when a defined area is provided. For example, once all the debris within a well-defined area has been placed at the curbside, a scope of work can be written that requires the contractor to conduct a one-time pass to be removed all identified material from the curbside and placed at a specified location (landfill).




Area Method Advantages:

- Provides an easy means of establishing the cost of the work at the time of bid opening
- Requires minimum labor for monitoring
- Is easy to monitor as the scope of work is well defined
- Is easy to determine when the contractor has completed the work
- The contractor assumes most of the risk

Area Method Disadvantages:

- Scope of work must be definable to minimize change orders for additional work
- May be difficult to quantify the amount of debris that will be brought to the right-of-way for removal
- Has a high probability of claims if debris estimates are difficult to estimate and require speculation

Pass Method

 Lump Sum - Pass Contract	
Advantages	Disadvantages
<ul style="list-style-type: none">• Minimum management needed• Scope of work is more defined• Quantities do not need to be documented unless change order submitted 	<ul style="list-style-type: none">• Requires accurate, up-to-date plans• Public must cooperate• Public information officer needed 
<small>California Emergency Management Agency</small>	<small>Disaster Debris Management</small>

The pass method is used when the scope defines how many passes down a particular street or in a given section of the town will be completed. For example, if homeowners are provided a schedule for placing certain materials at curbside over a specific period of time (say three week duration), a scope of work can be prepared to require the contractor to conduct a minimum number of passes (say three) throughout the community during the three-week period (say one pass per week) and place the material at a specified location (landfill).

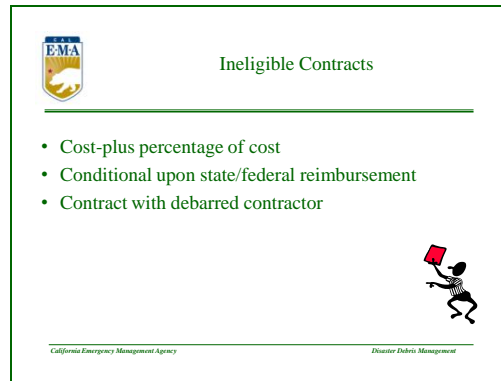
Pass Method Advantages:

- o Minimum labor required for monitoring and management
- o Defines the scope of work better than Area Method and decreases the risk of claims caused by quantity speculation
- o Quantities do not need to be documented as they do in a unit price contract

Pass Method Disadvantages:

- o Must have accurate, up-to-date plans and information on all roads that will be included in the “pass” scope of work
- o Public must cooperate in the removal process – placing debris on a schedule, segregating materials, placing only eligible debris
- o Contracting agency must be successful in communicating with the public in removal area

Ineligible Contracts



The following conditions may result in terms of contracts, and associated work, being ineligible for Federal reimbursement.

- Cost-plus percentage of cost
 - o 44 CFR Part 13.36(f)(4) specifically precludes use of this contract type
 - o This type of contract encourages the contractor to exceed the initial cost estimates by basing their fee on a percentage of the costs
- Conditional upon state/federal reimbursement
 - o Contracts which indicate a contractor will be paid only upon receiving state/federal funds are ineligible
- Contracts with debarred contractors
 - o 44 CFR Part 13.35 specifically precludes use of debarred contractors
 - o Communities should check with the State for current list of debarred contractors

Information regarding contractors can be found on the California Contractor's State Licensing Board at: www.cslb.ca.gov/consumers/default.asp or on the FEMA website at: www.arnet.gov/epls/.